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**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

IN RE : HYUNDAI SONATA ENGINE
LITIGATION

Case No. 5:15-cv-1685-BLF

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR ATTORNEY FEES,
COSTS, AND SERVICE AWARDS**

Date: December 15, 2016

Time: 2:00 p.m.

Judge: Hon. Beth Labson Freeman

Courtroom: 3

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1 **NOTICE OF MOTION**

2 PLEASE TAKE NOTICE that on December 15, 2016, at 2:00 p.m. before the Honorable Beth
3 Labson Freeman in Courtroom 3, 5th Floor of the United States District Court for the Northern District
4 of California, San Jose Division, located at 280 South 1st Street, San Jose, California 95113, Plaintiffs
5 Elizabeth Mendoza and Beth Graham will and hereby do move for an order awarding class counsel
6 \$795,000 in attorney fees and expenses, and awarding \$2,500 each to Plaintiffs Mendoza and Graham.

7 Plaintiffs' motion is based on this notice; the accompanying the Memorandum of Points and
8 Authorities, declarations of Eric H. Gibbs, Benjamin F. Johns, and Richard McCune; Proposed Final
9 Order and Judgment; and all other papers filed and proceedings had in this action.

10 DATED: September 28, 2016

Respectfully submitted,

11 By: /s/ Eric H. Gibbs

12
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Having achieved the goals of this lawsuit and negotiated a class settlement that will provide
4 nearly a million 2011-2014 Hyundai Sonata owners with timely and comprehensive relief for a serious
5 engine defect, Class counsel have a claim for attorney fees and expenses under two California fee-
6 shifting statutes. Rather than litigating the appropriate amount of this fee award, however, the parties
7 have settled on \$795,000 for both fees and expenses—a figure that is within the range of fees that the
8 Court might have awarded in a contested motion.

9 Plaintiffs now request that the Court approve the fee authorized by the parties' agreement under
10 Rule 23(h) of the Rules of Civil Procedure. The lodestar analysis used to calculate fees under California
11 law confirms that the agreed-upon fee is reasonable. Class counsel has spent 1,962 hours over the past
12 year and a half working on behalf of the class, which at their current hourly billing rates amounts to a
13 lodestar value of \$882,201. That means that the fee Hyundai has agreed to pay includes an effective
14 multiplier of between 0.90 (if the entire \$795,000 is attributed to fees) and 0.86 (if counsel's litigation
15 costs are first deducted from the \$795,000 figure). That multiplier will decrease even further as class
16 counsel continue to fulfill their post-settlement obligations to the class. In light of the contingency risk
17 class counsel undertook and the positive results they achieved, both of which could have supported a
18 significantly higher multiplier in a contested proceeding, the amount of attorney fees and expenses
19 Hyundai has agreed to pay reflects a rational and arm's-length decision. It may therefore be approved
20 as reasonable under Rule 23(h).

21 Class counsel also requests that the Court approve service awards of \$2,500 to both Plaintiff
22 Mendoza and Plaintiff Graham. This amount is modest in comparison to typical service awards, and
23 takes into account the fact that the litigation was relatively short-lived, while also appropriately
24 recognizing the contributions that Plaintiffs have made on behalf of similarly-situated Sonata owners.

25 **II. OVERVIEW OF CLASS COUNSEL'S WORK IN THE CASE**

26 **A. Pre-Filing Investigation and Complaint Preparation (Oct. 2014 – May 2015)**

27 Before initiating this litigation, Plaintiffs' counsel devoted substantial time and energy to
28 investigating the underlying facts and developing their allegations. They reviewed details provided by

1 50 Sonata owners who contacted them directly, interviewing 30 of these drivers regarding their
2 experiences. (Gibbs Decl., ¶ 4; Johns Decl., ¶ 6; McCune Decl., ¶ 22.) They also reviewed over
3 hundred online complaints, conducted factual research into the Sonata's rotating assembly, and
4 consulted with an automotive expert to assess how the range of symptoms reported by Sonata drivers
5 might be related and to identify potential root causes. (*Id.*) One of their automotive experts also
6 conducted a tear down and analysis of a failed Sonata engine. (Johns Decl., ¶ 6.) Collectively, these
7 efforts allowed Plaintiffs to plead fairly detailed complaints that reflected a solid understanding of the
8 technology and vehicles at issue.

9 **B. Continued Investigation and Case Coordination (May 2015 – Aug. 2015)**

10 Following the filing of the *Mendoza* and *Graham* class action complaints, plaintiffs' counsel
11 worked together and with Hyundai's counsel to establish an agreed-upon case management structure.
12 (Gibbs Decl., ¶ 6; Johns Decl., ¶ 6.) They stipulated to relate the two cases as well as to appoint interim
13 class counsel. At the same time, they were continuing to investigate the alleged engine defect,
14 speaking with over a hundred additional Sonata owners and reviewing complaints received from a
15 hundred more Sonata owners. (Gibbs Decl., ¶ 6.) The feedback they received from class members
16 assisted in class counsel's efforts to establish a connection between the various symptoms reported by
17 Sonata owners, to show that those symptoms did not reflect isolated issues, and to establish evidence of
18 supporting allegations of a systematic policy by Hyundai to deny warranty coverage to a large
19 percentage of Sonata owners.

20 **C. Settlement Meeting and Formal Mediation (Aug. 2015 – Nov. 2015)**

21 Based on their conversations with class members and the likelihood that engine failures would
22 continue to mount, counsel knew that time was of the essence for Sonata owners and expended a
23 considerable amount of time convincing Hyundai to address this issue sooner rather than later. In
24 September 2015, class counsel held a confidential settlement meeting with Hyundai's counsel and one
25 of its engineering representatives, allowing for candid and highly informed discussions regarding
26 Plaintiffs' allegations and Hyundai's defenses. (Gibbs Decl., ¶ 8; Johns Decl., ¶ 6; McCune Decl., ¶
27 26.) The parties subsequently agreed to formal mediation before Judge James P. Kleinberg (Ret.) of
28

JAMs, and after exchanging mediation briefs and engaging in a day of mediation, they were able to reach agreement on a settlement in principle. (*Id.*)

D. Negotiation of Settlement Agreement and Preparation of Preliminary Approval Papers (Nov. 2015 – April 2016).

Following the parties' agreement in principle, Plaintiffs conducted discovery of Hyundai to confirm information it had provided on a confidential basis during settlement discussions. (Gibbs Decl., ¶ 10; Johns Decl., ¶ 6, McCune Decl., ¶ 26.) This discovery included raw data and analysis relating to potentially relevant warranty claims, customer complaints, goodwill payments, and field service reports. It also included some of the same materials that were prepared internally to brief Hyundai executives about the alleged engine defect and root cause analysis. Class counsel prepared the first draft of a comprehensive settlement agreement and worked extensively with class members, drawing heavily on the information they had provided over the course of the litigation, to ensure that the agreement addressed a wide range of class member experiences. (Gibbs Decl., ¶ 10.) The parties exchanged numerous redlines and held several conference calls to address details of the settlement and resolve items of disagreement, eventually reaching a signed settlement in April 2016. (*Id.*) Class counsel also designed a claim form, claims, process, and glovebox pamphlet to maximize class member participation, worked with Hyundai to finalize those documents, and prepared their motion for preliminary settlement approval. (Gibbs Decl., ¶ 10, Johns Decl., ¶ 6; McCune Decl., ¶ 27-28.)

E. Preliminary Approval Hearing, Class Member Communications, Final Approval and Fee Briefing (April 2016 – Present)

Class counsel appeared before the Court on June 23, 2016, and again via telephone the following week, to discuss Plaintiffs' motion for preliminary approval, class notice, and a schedule for final approval. (Gibbs Decl., ¶ 12.) Since Hyundai began disseminating class notice on August 15th, class counsel has spent more than 100 hours communicating with class members regarding the settlement. (*Id.*, ¶ 14.) Altogether, class counsel has been contacted by almost 1,200 Sonata owner since the filing of this case. (*Id.*, ¶ 12.) Class counsel also prepared this fee application and Plaintiffs' motion for final approval, and expects to spend at least 200 additional hours between now and the final

1 approval hearing responding to class member inquiries, preparing our reply briefing, and representing
2 the class at the final approval hearing. (*Id.*, ¶¶ 12, 14; McCune Decl., ¶ 34)

3 **III. ARGUMENT**

4 **A. The Court's Role in Evaluating the Agreed-Upon Fee to Be Paid By Hyundai.**

5 At the conclusion of a successful class action, class counsel may apply to the Court for an award
6 of “reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’
7 agreement.” Fed. R. Civ. P. 23(h). Here, class counsel’s fee application is authorized by the parties’
8 agreement, which provides that Hyundai will not oppose a fee and cost award of up to \$795,000, and
9 will pay that amount separate and apart from the relief it is providing to class members. (Settlement,
10 Sec. V.2, V.4.) But the Court must nonetheless ensure that the fee award agreed to by Hyundai is
11 reasonable. *See In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). The
12 reason is that while ordinarily a defendant would never agree to pay more than a fee-shifting claim is
13 worth, in a class action setting there is a risk that class counsel negotiated a class settlement that under-
14 compensates class members in exchange for defendant’s agreement to an inflated fee settlement. *See*
15 *Staton v. Boeing Co.*, 327 F.3d 938, 964 (9th Cir. 2003) (“If fees are unreasonably high, the likelihood
16 is that the defendant obtained an economically beneficial concession with regard to the [class] merits
17 provisions.”).

18 The Court therefore should review the \$795,000 Hyundai has agreed to pay and ask whether it
19 is the result of a legitimate fee settlement. “[S]ince the proper amount of fees is often open to dispute
20 and the parties are compromising precisely to avoid litigation, the court need not inquire into the
21 reasonableness of the fees even at the high end with precisely the same level of scrutiny as when the fee
22 amount is litigated.” *Id.* at 966. Nonetheless, the Court should conduct its own lodestar calculation and
23 ensure that \$795,000 is not “measurably higher than [Hyundai] could conceivably have to pay were the
24 fee amount litigated.” *Id.* So long as Hyundai did not agree to pay measurably more than a rational
25 defendant would agree to pay in similar circumstances, class counsel’s fee application may be
26 approved. But if the Court finds that the settlement calls for attorney fees outside the upper bounds of
27 what class counsel conceivably could have obtained through a contested motion, then it stands to
28 reason that class counsel must have traded the class’s rights for that higher fee. In that case, the entire

1 settlement would have to be considered suspect, and neither the requested fee nor the settlement should
2 be approved.

3 **B. Plaintiffs Are Entitled To A Fee Under California Law.**

4 Hyundai's agreement to pay a fee award was reasonable under two California fee-shifting
5 statutes, both of which are designed to reward counsel who successfully pursue consumers' interests
6 through publicly-beneficial litigation. The first statute is the California Consumers Legal Remedies
7 Act (CLRA), Cal. Civ. Code § 1780(e), which provides for an award of attorney fees to a prevailing
8 plaintiff in an action brought pursuant to the CLRA (as this case was). The second statute is
9 California's codification of the private attorney general doctrine, Cal. Code of Civ. Proc. § 1021.5. It
10 provides for attorney fees to a successful party who confers a significant benefit on the general public
11 or large class of persons.

12 Plaintiffs are entitled to a fee under both of these statutes, as they succeeded in their litigation
13 objectives—Sonata owners have now been warned about the alleged engine defect, provided with free
14 engine inspections and repairs, and offered reimbursements for prior repair and rental car expenses. It
15 does not matter that Plaintiffs succeeded through a settlement rather than through a judgment following
16 trial, it only matters that they succeeded. *See Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 566
17 (2004) (“[t]he critical fact is the impact of the action, not the manner of its resolution”); *Kim v.*
18 *Euromotors West/The Auto Gallery*, 149 Cal. App. 4th 170, 178-79 (2007) (a plaintiff may be entitled
19 to a fee under the CLRA “either because he obtained a net monetary recovery or because he achieved
20 most or all of what he wanted by filing the action or a combination of the two.”)

21 **C. The Negotiated Fee Is Reasonable Under California's Lodestar Method.**

22 The parties were able to successfully mediate Plaintiffs' fee claims, but if they had litigated the
23 matter, the Court would have determined a reasonable fee to award class counsel using California's
24 lodestar method. *See Mangold v. California Public Utilities Commission*, 67 F.3d 1470, 1478 (9th Cir.
25 1995) (in diversity cases, state law applies “in determining not only the right to fees, but also in the
26 method of calculating the fees”). The California Supreme Court recently authorized courts to use either
27 the lodestar method or the percentage method in common fund cases, but as this is a fee-shifting case
28 rather than a common fund case, the lodestar method remains “[t]he primary method for establishing

1 the amount of ‘reasonable’ attorney fees.” *In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556
2 (2009); *Laffitte v. Robert Half Int’l Inc.*, 376 P.3d 672, 686 (Cal. 2016) (“We do not address here
3 whether or how the use of a percentage method may be applied when there is no conventional common
4 fund out of which the award is to be made.”).

5 Using the lodestar method to calculate Plaintiffs’ fee award, the Court would have first
6 calculated a lodestar based on a “careful compilation of the time spent and reasonable hourly
7 compensation for each attorney . . . involved in the presentation of the case.” *Id.* at 682. It then could
8 have adjusted the lodestar figure by applying a multiplier, the primary purpose of which is to
9 compensate counsel for prosecuting the case on a contingent basis. *Id.* at 677. Other factors, such as
10 the difficulty of the case and the skill displayed by counsel are also occasionally taken into account. *Id.*
11 at 675-78. To ensure that the fee Hyundai has agreed to pay is not “distinctly higher than the fees class
12 counsel could have been awarded . . . using the lodestar method,” *Staton*, 327 F.3d at 966, the Court
13 should therefore assess (i) the time counsel billed to the case, to confirm that it was reasonably spent
14 and not padded through excessive or duplicative efforts; (ii) the hourly rates used for each attorney or
15 paralegal on the case, to confirm they are in line with the prevailing hourly rates in the community; and
16 (iii) whether the resulting multiplier is within the range of multipliers that could have been awarded to
17 compensate counsel for contingency risk.

18 **1. Class Counsel’s Time Was Reasonable Spent.**

19 To assist the Court in evaluating the reasonableness of the time spent on this case, Class
20 Counsel have reviewed their daily time records and prepared a summary of the work performed during
21 throughout litigation. (*See* Gibbs Decl., ¶¶ 3-15; Johns Decl, ¶ 6; McCune Decl., ¶¶ 22-29); *see also*
22 Section II, *supra*.) Class counsel believes that this will be more helpful to the Court in assessing their
23 time and contributions than would combing through daily records, and is sufficient as an evidentiary
24 matter, but would be happy to provide the daily time records as well if the Court prefers. *See*
25 *Winterrowd v. Am. Gen. Annuity Ins. Co.*, 556 F.3d 815, 827 (9th Cir. 2009) (when awarding fees under
26 a California fee-shifting statute, “[t]estimony of an attorney as to the number of hours worked on a
27 particular case is sufficient evidence to support an award of attorney fees”).
28

Altogether, class counsel has devoted 1,962 hours to this case over the past year and a half. This time, as summarized above in Section II.A – II.E and in class counsel’s declarations, includes a rigorous pre-filing investigation; case coordination activities; work with expert automotive consultants; a settlement meeting with Hyundai and its engineering representative; formal mediation before Judge Kleinberg (Ret.); a carefully-considered and extensively-negotiated settlement agreement, claim form, and glovebox insert designed to maximize class member participation; preliminary approval briefing; final approval and fee briefing; and ongoing communications with over 1,200 Sonata owners (so far) regarding the litigation and settlement. (Gibbs Decl., ¶¶ 3-15; Johns Decl, ¶ 6; McCune Decl., ¶¶ 22-29.)

In assessing whether the time reported by counsel for accomplishing these tasks is reasonable, the Court may take account its overall sense of the lawsuit and may use estimates—the goal is “to do rough justice, not to achieve auditing perfection.” *Bohannon v. Facebook, Inc.*, No. 12-CV-01894-BLF, 2016 WL 3092090, at *6–7 (N.D. Cal. June 2, 2016) (quoting *Fox v. Vice*, 563 U.S. 826, 838 (2011)). The Court may also consider the time approved by courts in similar cases. While no two automotive class actions are the same, it is not unusual for class counsel to front-load their efforts and work actively with experts and the defendant automaker to understand the defect at issue and negotiate a plan for repairs and reimbursement early in the litigation—when relief is most needed. A review of several cases of this ilk, each of which was resolved early with little or no motion practice, shows that the time spent by class counsel falls comfortably within the range of hours previously found by courts to be reasonable:

Case Name	Hours	Filing to Settlement	Hours Per Month
<i>Eisen v. Porsche Cars N. Am., Inc.</i> , No. 2:11-CV-09405-CAS, 2014 WL 439006, at *11 (C.D. Cal. Jan. 30, 2014); <i>see also</i> ECF No. 56	2,704	16 months	169
<i>Sadowska v. Volkswagen Grp. of Am.</i> , No. CV 11-00665-BRO AGRX, 2013 WL 9600948, at *1, *9 (C.D. Cal. Sept. 25, 2013)	3,115	23 months	135
<i>Sugarman v. Ducati N. Am., Inc.</i> , No. 5:10-CV-05246-JF, 2012 WL 113361, at *6 (N.D. Cal. Jan. 12, 2012); <i>see also</i> ECF No. 80 at 3.	1,929	9 months	214

Case Name	Hours	Filing to Settlement	Hours Per Month
<i>Browne v. Am. Honda Motor Co.</i> , No. CV 09-06750-MMM, 2010 WL 9499073, at *1, 6, 10 (C.D. Cal. Oct. 5, 2010)	3,255	6 months	543
Average	2,751	14 months	265
This Case	1,962	12 months	164

2. Class Counsel's Hourly Rates Fall Within the Range of Rates Prevailing in the Community and Have Been Previously Approved.

Listed below are the current billing rates for each attorney or paralegal who contributed to this case, along with the time each spent on the case and the resulting lodestar. Additional information about the work performed by each of these attorneys and paralegals is provided in the declarations of Eric Gibbs, Benjamin F. Johns, and Richard D. McCune, and additional information on individual attorneys' background and experience can be found in the firm resumes attached to those declarations. (Gibbs Decl., Ex. A; Johns Decl., Ex. A; McCune Decl., Ex. A.)

Name	Title	Bar Date	Hours	Rate	Lodestar
Gibbs Law Group LLP					
Eric H. Gibbs	Partner	1995	71.8	\$710	\$50,978
Dylan Hughes	Partner	2000	57.8	\$625	\$36,125
Geoffrey A. Munroe	Partner	2003	118.8	\$595	\$70,686
David Stein	Partner	2008	122.9	\$520	\$63,908
Steve Lopez	Associate	2014	186.2	\$350	\$65,170
Caroline Corbitt	Associate	2015	92.3	\$320	\$29,536
Jason Gibbs	Paralegal	-	368.0	\$190	\$69,920
			<i>1,017.8</i>	<i>\$380</i>	<i>\$386,323</i>
Chimicles & Tikellis LLP					
Joseph G. Sauder	Partner*	1998	92.0	\$700	\$64,400
Matthew D. Schelkopf	Partner*	2002	305.3	\$600	\$183,150
Andrew W. Ferich	Associate	2012	39.3	\$375	\$14,719
Joseph B. Kenney	Associate*	2013	93.7	\$300	\$28,095
Justin B. Boyer	Paralegal	-	10.0	\$175	\$1,750
Jesse D. Royer	Paralegal*	-	176.5	\$150	\$26,475
Attorneys with < 10 hrs					\$6,543
			<i>734.7</i>	<i>\$443</i>	<i>\$325,133</i>

* Denotes former attorney or paralegal

McCune Wright LLP

Richard D. McCune	Partner	1987	94.6	\$825	\$78,045
David C. Wright	Partner	1995	107.2	\$825	\$86,625
Daniel Chang	Associate	1996	5.4	\$650	\$3,510
Joseph B. Kenney	Associate	2013	1.5	\$350	\$525
Jesse D. Royer	Paralegal	-	0.9	\$200	\$180
Rhonda Espinosa	Paralegal	-	0.2	\$225	\$45
			209.8	\$814	\$170,745
Total			1,962.3	\$450	\$882,201

These rates are set by counsel based on their own experience, periodic review of the rates charged by other attorneys involved in complex litigation, and survey results published by trade periodicals like the National Law Journal, and fall within the range of rates prevailing in the relevant legal community. *See In re Magsafe Apple Power Adapter Litig.*, No. 5:09-CV-01911-EJD, 2015 WL 428105, at *12 (N.D. Cal. Jan. 30, 2015) (“In the Bay Area, reasonable hourly rates for partners range from \$560 to \$800, for associates from \$285 to \$510, and for paralegals and litigation support staff from \$150 to \$240”) (collecting cases); *MacDonald v. Ford Motor Co.*, No. 13-CV-02988-JST, 2016 WL 3055643, at *9 (N.D. Cal. May 31, 2016) (approving requested hourly rates of \$695 for of counsel and senior counsel, and \$370-495 for associates)

In addition, class counsel’s hourly rates have been regularly evaluated by courts in California and across the country and approved as reasonable. (*See* Gibbs Decl., ¶ 17 (citing *Velasco v. Chrysler Group, LLC*, No. 2:13-cv-08080-DDP, ECF No. 167 (C.D. Cal. Jan. 27, 2016); *In re Adobe Systems Inc. Privacy Litigation*, No. 5:13-cv-05226-LHK, ECF No. 107 (N.D. Cal. Aug. 13, 2015); *In re Hyundai and Kia Fuel Economy Litig.*, No. 2:13-ml-024240-GW, ECF No. 437 (C.D. Cal. March 19, 2015); *Skold v. Intel Corp.*, No. 1-05-CV-039231, Online Dkt. No. 589 (Cal. Super. Ct., Santa Clara Cty. Jan. 29, 2015); Johns Decl., ¶ 9 (citing *In re Philips/Magnavox TV Litig.*, No. 09-3072, 2012 U.S. Dist. LEXIS 67287, at *44-48 (D.N.J. May 14, 2012); *Johnson et al. v. W2007 Grace Acquisition I Inc. et al.*, No. 2:13-cv-2777, ECF No. 135 (W.D. Tenn. Dec. 4, 2015); *Henderson v. Volvo Cars of N. Am., LLC*, No. 2013 U.S. Dist. LEXIS 46291 *4-47 (D.N.J. Mar. 22, 2013); *Yaeger v. Subaru of Am., Inc.*, No. 1:14-cv-4490 (JBS-KMW), 2016 U.S. Dist. LEXIS 117195, at *8 (D.N.J. Aug. 31, 2016).)

1 **3. Class Counsel’s Effective Multiplier Is Below That Typically Awarded In**
2 **Contingent Litigation**

3 “After determining the lodestar, the Court divides the total fees sought by the lodestar to arrive
4 at the multiplier. ... If the multiplier falls within an acceptable range, it further supports the conclusion
5 that the fees sought are, in fact, reasonable.” *Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D.
6 673, 690 (N.D. Cal. 2016). Here, the total lodestar value of class counsel’s services, as reflected in the
7 above chart, is \$882,201, and the total fee sought is \$795,000—yielding an effective multiplier of 0.90.
8 The effective multiplier is even lower if the Court first subtracts litigation costs from the requested fee
9 award. *See MacDonald v. Ford Motor Co.*, No. 13-CV-02988-JST, 2016 WL 3055643 at *10 (N.D.
10 Cal. May 31, 2016) (“An attorney is entitled to ‘recover as part of the award of attorneys' fees those
11 out-of-pocket expenses that would normally be charged to a fee paying client.’”). Over the past year
12 and a half, class counsel has incurred a total of \$33,584 in litigation expenses to prosecute this case,
13 including expert fees, mediation fees, and travel expenses. (*See* Gibbs Decl., ¶ 18; Johns Decl., ¶ 10,
14 McCune Decl., ¶ 37.) That means \$761,416 can be allocated solely to attorney fees, which yields an
15 effective multiplier of 0.86. And that effective multiplier will continue to fall in the coming months, as
16 class counsel continues to fulfill their obligations to the class. (Gibbs Decl., ¶¶ 14-15 (estimating class
17 counsel will be required to spend at least 200 additional hours prior to the final approval hearing);
18 McCune Decl., ¶ 34 (estimating an additional \$30,000 in lodestar).)

19 The upper range of what Plaintiffs could have received through a contested fee motion is
20 significantly higher than the effective 0.86-0.90 multiplier they are receiving here. Multipliers in
21 complex contingency fee matters under California law “can range from 2 to 4 or even higher.” *Wershba*
22 *v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see, e.g., MacDonald*, 2016 WL 3055643
23 at *9-10 (N.D. Cal. May 31, 2016) (awarding fee multiplier of 2.0 in a contested fee motion);
24 *Sadowska*, 2013 WL 9600948 at *9 (approving a negotiated fee that included a 1.37 multiplier as
25 reasonable).

26 The award of a multiplier in a contested motion can be based on several factors, but the degree
27 of risk taken on by counsel and the result achieved for class members are generally considered the most
28 important. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1138 (2001) (“the purpose of a fee enhancement is
primarily to compensate the attorney for the prevailing party at a rate reflecting the risk of nonpayment

1 in contingency cases”); *Parkinson v. Hyundai Motor America*, 796 F. Supp. 2d 1160, 1174-75 (C.D.
2 Cal. 2010), 796 F. Supp. 2d at 1174-75 (“[t]he benefit obtained for the class has been cited as the factor
3 bearing the most weight or the determinative factor in the decision of whether to apply a lodestar
4 multiplier”). Both of these factors likely would have supported the award of a significant multiplier in
5 a contested fee motion.

6 Class Counsel has devoted thousands of hours and \$33,584 of their own money to prosecute this
7 case on behalf of the class. They did so on a wholly contingent basis, meaning that if they had not
8 succeeded in their efforts they would not have been paid for their time and would not have recouped
9 their expenses. Under these circumstances, a multiplier is justified to compensate Class Counsel for the
10 risk they undertook and to ensure that qualified attorneys will continue to prosecute consumer
11 protection actions like this one on a contingency basis. *See Ketchum*, 24 Cal. 4th at 1133 (“A lawyer
12 who both bears the risk of not being paid and provides legal services is not receiving the fair market
13 value of his work if he is paid only for the second of these functions. If he is paid no more, competent
14 counsel will be reluctant to accept fee award cases.”)

15 The result achieved for the class would also support the award of a multiplier, as Class Counsel
16 achieved virtually everything that class members could have asked for, and virtually everything that
17 Plaintiffs requested in their complaint. Hyundai has acknowledged the alleged engine defect; it is
18 providing Sonata owners with free inspections and repairs as needed to remedy the engine defect; and it
19 is offering full reimbursements to all class members who previously spent money on repairs, including
20 full reimbursement for towing and rental car expenses. It will also evaluate claims for compensation
21 made by class members who sold their vehicles at a loss because they could not afford the repair.

22 The effective 0.86-0.90 multiplier agreed upon by the parties here should, in other words, raise
23 no concerns of collusion. It is well within, if not lower than, the range of multipliers that the Court
24 conceivably could have awarded in a contested fee motion, and therefore reflects that Hyundai’s
25 agreement to pay class counsel fees was a rational and arm’s-length decision that may be approved by
26 the Court pursuant to Rule 23(h). *See Eisen*, 2014 WL 439006 at *11 (“because the fees requested are
27 in fact lower than the lodestar in this case, the Court concludes that plaintiffs’ request for attorneys’ fees
28 and costs should be granted”); *Aarons v. BMW of N. Am., LLC*, No. CV 11-7667 PSG CWX, 2014 WL

4090564, at *18 (C.D. Cal. Apr. 29, 2014) (“Class Counsel’s conservative request makes the Court’s analysis much simpler.”).

D. The Service Awards Requested for Plaintiffs Are Reasonable and Appropriate.

Class counsel is requesting that the Court authorize service awards of \$2,500 to both Plaintiff Mendoza and Plaintiff Graham. Service awards (also referred to as incentive awards) are fairly typical in class actions, and are “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009).

Here, both Plaintiffs Graham and Mendoza stepped forward to serve as private attorneys general on behalf of all Sonata owners. They worked with counsel to present their individual experiences on behalf of the class, searched for and provided documentation to support their claims, reviewed the complaint prior to filing, consulted with class counsel regarding potential settlement remedies, and carefully reviewed the settlement agreement on behalf of the class. (Gibbs Decl., ¶ 19.) Although the case settled relatively quickly and did not ultimately require a lengthy commitment, Plaintiff Graham and Plaintiff Mendoza were willing to serve as class representatives for as long as it took, to produce personal documents, and to sit for a deposition and appear at trial if needed. (*Id.*) Their commitment to the class’s interests and desire to address an important issue, not just for themselves, but for all Sonata owners was essential to the successful and timely prosecution of this class action and, in class counsel’s view, warrants recognition in the form of the modest \$2,500 service awards requested here. *See, Ebarle v. Lifelock, Inc.*, No. 15-CV-00258-HSG, 2016 WL 5076203, at *12 (N.D. Cal. Sept. 20, 2016) (“Many courts in the Ninth Circuit have held that a \$5,000 incentive award is ‘presumptively reasonable.’”).

IV. CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that the Court approve the \$795,000 fee award negotiated by the parties pursuant to Rule 23(h), and also approve awards of \$2,500 to both Plaintiff Mendoza and Plaintiff Graham in recognition of their service on behalf of Sonata owners.

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Respectfully submitted,

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